

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JAMES A. LOSSIA,

Petitioner,

v.

Case Nos. 04-80422 and 07-15313  
Hon. Lawrence P. Zatkoff

UNITED STATES OF AMERICA,

Respondent.

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**OPINION AND ORDER ADOPTING**

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter comes before the Court on Magistrate Judge Morgan's Report and Recommendation [dkt 67], in which the Magistrate Judge recommends that the Court deny Petitioner's Amended Motion to Vacate Sentence. Petitioner has filed objections to the Report and Recommendation [dkt 69], and the Court reviews the objected-to portions of the Report and Recommendation *de novo*.

The Court has thoroughly reviewed the court file, the Report and Recommendation, and Petitioner's objections. As a result of that review, the Court ADOPTS the Report and Recommendation and enters it as the findings and conclusions of this Court. The Court notes that Petitioner questions whether former Magistrate Pepe prepared and approved of the original report and recommendation in this matter. For the following reasons, the Court finds that Petitioner's concerns are unfounded.

On March 29, 2010, former Magistrate Pepe sent an email to this Court, which provided in pertinent part:

For the past several weeks I have been “moving” after 26 years of accumulation. Last fall I moved from my chambers on level 1 to the second floor so renovations could be done . . . Miscellaneous items were put in temporary storage. I have been reviewing those items and disposing of most of them. But this morning, I ran across a file box in the James Lossia case that I thought I had entered an R&R on last summer. Between May 1 and July 31, I had three different case managers and no one who was monitoring matters as I would have hoped.

Before my law clerk, . . . , left me to clerk on the 6th Circuit last July, he indicated that I had completed review and entry of all his pending matters which would have included the Lossia Habeas matter. Yet, when I checked the docket in *Lossia* this morning, I did not find my July 13, 2009, R&R docketed. Upon reviewing this R&R again today, I recall having earlier reviewed and approved its entry last summer. I have no idea why it was not docketed.

Anyway, I cannot currently enter an R&R because my term ended March 3. I am attaching the R&R for possible use in your chambers as a thorough memorandum on the case. I held an evidentiary hearing . . . I did not find Petitioner’s testimony convincing that he would not have waived Indictment had fuller inquiry been made. His attorney testified that he advised his client that waiving Indictment and proceeding on an Information would assure the government would not add additional charges that were available, and would also start the “clock” running on credit for time served because Petitioner was not on bail.

Thus, former Magistrate Pepe’s email, which he sent to this Court on his own initiative, confirms that (1) he prepared the initial Report and Recommendation in this matter, (2) he fully intended to file the Report and Recommendation as quoted by Magistrate Judge Morgan, and (3) the Report and Recommendation was not entered due to a clerical error.

Accordingly, IT IS HEREBY ORDERED that Petitioner’s Amended Motion to Vacate Sentence [dkt 56] is DENIED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: October 7, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 7, 2010.

S/Marie E. Verlinde

Case Manager

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